STATE OF MICHIGAN

COURT OF APPEALS

LAWRENCE A. BOYCE II,

Plaintiff-Appellee,

v

JOHN WILLIAMS, CLYDE SHELTROWN, JOSEPH BELL, RONALD KNIGHT, and CLARICE SPERRY,

Defendants-Appellants.

UNPUBLISHED
August 9, 2005

No. 252206
Ogemaw Circuit Court
LC No. 03-654570-AP

Before: Murray, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

Defendants appeal by leave granted a circuit court order affirming a district court judgment entered after granting plaintiff's motion for summary disposition. Because the Ogemaw County Board of Commissioners (the Board) violated MCL 46.30a when it appointed defendant John Williams to the position of Zoning Administrator while he was still a member of the Board, we affirm the circuit court in part. Because the Board acted in reasonable, and good faith reliance on the opinion of the office of the Attorney General, we apply the doctrine of entrapment by estoppel in this prosecutorial action, and reverse both the circuit court's order affirming the district court judgment, and vacate the district court judgment in the amount of $23,042.73.[1]

Substantive Facts

The facts in this case are not in dispute. As of April 16, 2002, all defendants were elected members of the Board. At an April 16, 2002 board meeting, the Board sought to fill the position of Ogemaw County Building and Zoning Administrator (Zoning Administrator), a position filled by appointment of the Board and employed by Ogemaw County. Defendant Williams applied

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[1] The county prosecuting attorney commenced a civil action in the district court in the name of a taxpayer to recover salaries paid rather than instituting a criminal prosecution. MCL 46.30a(2), (3), and (4).

for the position and the Board excused him from the April 16 meeting because he was an applicant. A majority of the Board voted to appoint Williams. The Board and defendant Williams did not fix resignation and start dates at the time, and they did not review or establish terms of employment.

In a letter to the Board dated April 24, 2002, the Ogemaw County prosecutor advised that even considering defendant Williams for the position of Zoning Administrator may be a violation of the County Boards of Commissioners Act, (CBCA), MCL 46.1 *et seq*; MCL 46.30a. Noting inconsistent Attorney General opinions on the subject and relating uncertainty regarding whether any illegality had taken place, the prosecutor advised the Board to seek an opinion from the Attorney General. The prosecutor did not advise the Board concerning its civil or criminal liability for violation of MCL 46.30a but communicated that he would probably have to bring a declaratory judgment action for judicial interpretation of the relevant statutes.

The Board reviewed an opinion letter received from the office of the Attorney General concerning defendant Williams' appointment as Zoning Administrator at a special meeting on May 10, 2002.[2] In the letter, the Attorney General's office discussed the CBCA, MCL 46.30a; the Incompatible Public Offices Act, (IPOA), MCL 15.181 *et seq*; and the exception to the IPOA for a county having a population of less than 25,000 persons, MCL 15.182(4)(c). The opinion letter concludes in part, "it appears under these facts that the county commissioner may serve in both roles." After reading the opinion letter, the Board accepted defendant Williams' resignation letter effective May 12, 2002 and simultaneously appointed Williams as Zoning Administrator, effective May 13, 2002.

Procedural History

On August 2, 2002, the prosecutor brought a civil action in the district court pursuant to MCL 46.30a(2) on behalf of plaintiff, a taxpayer in Ogemaw County, to recover salaries paid to defendant Williams from all defendants. The prosecutor alleged defendants violated MCL 46.30a because the Board considered and appointed defendant Williams Zoning Administrator while he was still a member of the Board. Because the parties did not contest the substantive facts, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) and (C)(10). The district court held that defendants violated MCL 46.30a and granted summary disposition to plaintiff. After denying a motion for reconsideration, the district court entered judgment in favor of plaintiff in the amount of $23,042.73.[3] As a result of the district court judgment, defendant Williams' employment with the county as Zoning Administrator ceased. Defendants appealed, and the Ogemaw Circuit Court affirmed the district court's judgment. However, the circuit court stayed execution of the judgment for purposes of the present appeal. Defendants now appeal asserting that they did not violate MCL 46.30a by operation of MCL 15.182(4)(c), an exception to the IPOA. In the alternative, defendants seek to have the judgment vacated on the basis of good faith immunity.

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[2] Representative Dale Sheltrown, not defendant, requested the opinion of the Attorney General.

[3] The judgment represented the wages defendant Williams earned as Zoning Administrator.

Analysis

I. MCL 46.30a and MCL 15.182

The specific question before us is whether MCL 46.30a and MCL 15.182, when read together, authorize the Board to appoint one of its members as Zoning Administrator prior to his resignation from the Board. Defendants argue that both lower courts erred in concluding that Williams was not eligible for appointment based on the CBCA because the plain language of MCL 46.30a(1) uses the language, "except as otherwise provided by law." Defendants assert that this language clearly indicates the Legislature anticipated exceptions to the prohibition. And because a court must read and give meaning to all words in a statute, to conclude that no exceptions exist violates basic rules of statutory construction. Defendants also point to the IPOA, MCL 15.182 which contains a provision expressly authorizing counties with populations of less than 25,000, such as Ogemaw County, to employ public officials elsewhere within the local government unit. Defendants argue that under these facts we must read the two statutes together and, when read that way, they indicate a legislative intent to provide for the special needs of smaller counties.[4]

Plaintiff argues that the plain language of MCL 46.30a applies to defendants and explicitly forbids defendants' hiring decision. Plaintiff's position is that both defendants and the Attorney General have errantly combined MCL 46.30a with MCL 15.182 to provide "other law" authorizing defendants' hiring of defendant Williams. Plaintiff asserts that because defendant Williams indisputably never held incompatible offices, and, because there was never any actual conflict, MCL 15.182 is not implicated. Plaintiff also states that although the offices were not incompatible, holding the two positions created a conflict of interest when defendant Williams applied for the position while a member of the body responsible for making the hiring decision. Plaintiff declares that MCL 46.30a anticipates the possibility of statutory provisions allowing similar acts, but does not guarantee that they exist, and finally stresses that no statutory provisions explicitly authorize defendants' acts, therefore, they were forbidden.

This Court reviews de novo questions of statutory construction, with the fundamental goal of giving effect to the intent of the Legislature. *Weakland v Toledo Engineering Co, Inc*, 467 Mich 344, 347; 656 NW2d 175, amended on other grounds 468 Mich 1216 (2003). A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

This issue concerns the construction and interpretation of several statutes both standing alone and in concert. First is MCL 46.30a(1), and it provides as follows:

> A member of the county board of commissioners of any county shall not be eligible to receive, or shall not receive, an appointment from, or be employed by an officer, board, committee, or other authority of that county except as otherwise provided by law.

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[4] Amicus Curiae Michigan Association of Counties join defendants in their arguments.

MCL 15.182 states that "[e]xcept as provided in . . . [MCL 15.183], a public officer or public employee shall not hold 2 or more incompatible offices at the same time." MCL 15.183(4)(c) provides that MCL 15.182 does not "limit the authority of the governing body of a city, village, township, or county having a population of less than 25,000 to authorize a public officer or public employee to perform, with or without compensation, other additional services for the unit of local government." However, MCL 15.183(6) further provides that "[t]his section does not allow or sanction activity constituting conflict of interest prohibited by the constitution or laws of this state."

There is no dispute that defendant Williams was a member of the Board until after he received the appointment. The Zoning Administrator position is employed by the County and appointed by the County Commission. Again, MCL 46.30a(1) provides that "[a] member of the county commissioners . . . shall not receive an appointment from . . . [a] board . . . of that county except as otherwise provided by law." "The phrases 'shall' and 'shall not' are unambiguous and denote a mandatory, rather than discretionary action." *Roberts v Mecosta Co General Hospital*, 466 Mich 57, 65; 642 NW2d 663 (2002), citing *People v Grant*, 445 Mich 535, 542; 520 NW2d 123 (1994). Therefore, absent the exception at the end MCL 46.30a(1), the statute strictly forbade defendants from appointing defendant Williams while he was a member of the Board. However, the exception at the end of MCL 46.30a(1) expressly allows for the appointment if "otherwise provided by law."

No recent cases have interpreted MCL 46.30a(1). In 1976, this Court noted, in a footnote and without discussion, that "a member of the county board of commissioners may not simultaneously be a member of the county hospital board of trustees." *Schoolcraft County Bd of Comm'rs v Schoolcraft Memorial Hospital Bd of Trustees*, 68 Mich App 654, 655 n 1; 243 NW2d 708 (1976). A year later, this Court concluded that MCL 46.30a had been enacted apparently in response to a 1904 case that "involved neither incompatibility of office nor appointment by the board of one of its members to another county office or position, but rather the employment by the board of one of its members in ordinary county employment." *Crain v Gibson*, 73 Mich App 192, 201-202; 250 NW2d 792 (1977), referring to *Hanna v Chalker*, 136 Mich 8; 98 NW 732 (1904). In 1904, "this was not unlawful at common law, however it might be viewed ethically," *Crain*, *supra*, at 202, but such a holding "would clearly be decided differently today as a result of the legislative enactment of" MCL 46.30a. *Id*., at n 3.

> *Crain* further stated that
> [i]t is not uncommon or improper for a county board of commissioners, or a committee thereof, to ask an individual member or members to perform certain tasks such as investigating and reporting upon particular programs or situations; that such individual conduct on the part of the commissioners is not only impliedly necessary for the functioning of county boards, but is expressly sanctioned and compensation authorized therefor by . . . [the then-existing provisions of MCL 46.30]. [*Crain*, *supra*, at 202.]

However, *Crain* noted that MCL 46.30a required a distinction between *county* business and *board* business. *Id*., at 204-205. *Crain* explained that it was the business of the county to have certain work done and the business of the board to see to it that the work gets done – but not do to the work personally. *Id*., at 205-206. Under the circumstances of the case, *Crain* concluded that a county board member could not simultaneously serve as administrator of the county's

Federal Emergency Employment Program for compensation because the "day-to-day performance of the duties" under the latter position "was ordinary employment and within the express prohibition of" MCL 46.30a. *Id*., at 196, 205-206.

After this Court decided *Crain*, 1978 PA 326 went into effect, amending MCL 46.30a to enact its present language. Most of the changes to the statute were stylistic, but the Legislature made two substantive changes. First, the Legislature added entirely new language as subsection (6), which specifically placed an exception for drainage matters by providing that the section "does not prohibit a member of the county board of commissioners of a county from accepting compensation as an administrator of the federal emergency employment program." Thus, subsection (6) specifically addresses the issue decided in *Crain*. Second, the Legislature added the "except as otherwise provided by law" language central to this appeal. Defendants argue that such an exception is provided by operation of MCL 15.183(4)(c), because Ogemaw County has a population of less than 25,000.

MCL 15.183(4)(c) is intended to provide an exception to MCL 15.182, which prohibits public employees or officers from holding incompatible offices, a situation not presented in this case. It is not, however, by its plain language, intended to provide an exception to MCL 46.30a. Indeed, before MCL 46.30a was enacted, our Supreme Court in *Hanna* explicitly found as follows:

> The work which was done by . . . [the county supervisor employed by the board of supervisors in the case] was not work pertaining to the duties of his office as supervisor, and was not inconsistent with any duty he owed growing out of his relations as a supervisor, and it was not incompetent for the board to employ him in the capacity in which he acted. [*Hanna*, *supra*, at 11.]

The enactment of MCL 46.30a did not make employment of a board member by the Board incompatible. Rather, it made such employment forbidden unless authorized elsewhere. Our Supreme Court has explained that incompatibility depends on one of the three situations enumerated in MCL 15.181(b) *actually occurring* as a result of *actual performance* of a person's duties, as opposed to one of those events merely becoming possible. *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 164; 627 NW2d 247 (2001). The Board accepted defendant Williams' resignation and it became effective before he assumed his duties as Zoning Administrator, so the performance of his duties could not have created an incompatibility. By virtue of resignation, MCL 15.182 is not implicated, so it necessarily follows that the exception in MCL 15.183(4)(c) is also not implicated.

We also observe that to allow defendants to import and apply MCL 15.183(4)(c) to delimit MCL 46.30a(1) is to allow defendant Williams both positions, that of County Commissioner and that of Zoning Administrator. As Zoning Administrator, defendant Williams would look to himself as a County Commissioner for terms and conditions of employment, direction, supervision, acknowledgment, and even ratification. MCL 15.183(6) provides, "[t]his section does not apply to allow or sanction activity constituting conflict of interest prohibited by the constitution or laws of this state." MCL 46.30a(1) is best read as a conflict of interest prohibition. The only exceptions to MCL 46.30a(1) are contained in MCL 46.30a(5) and (6). The paid county position of Zoning Administrator is not contained or defined in either MCL 46.30a(5) and (6). Therefore, once again, the MCL 15.183(4)(c) exception is not available to

defendants to exempt their appointment of defendant Williams from the MCL 46.30a(1) prohibition.

As a matter of policy, certainly the CBCA, MCL 46.1 *et seq*, and the IPOA, MCL 15.181 *et seq*, share the common goal and purpose of limiting and controlling public officers and employees in their public dealings to minimize conflicts of interest. Statutes that relate to the same subject or share a common purpose are in pari materia and must be read together as one law, even if they contain no reference to one another and were enacted on different dates. *State Treasurer v Schuster*, 456 Mich 408, 417; 572 NW2d 628 (1998). And, statutes that have a common purpose should be read to harmonize with each other in furtherance of that purpose. *Jennings v Southwood*, 446 Mich 125, 136-137; 521 NW2d 230 (1994). If two statutes lend themselves to a construction that avoids conflict, that construction should control. *House Speaker v State Administrative Bd*, 441 Mich 547, 568-569; 495 NW2d 539 (1993). Where a specific statutory provision differs from a related general one, the specific one controls. *Gebhardt v O'Rourke*, 444 Mich 535, 542-543; 510 NW2d 900 (1994).

The CBCA and the IPOA are separate acts that reach distinct and potentially overlapping groups of public employees. MCL 15.182 of the IPOA applies generally to all public officers and encompasses positions of public employment. *Macomb Co Prosecutor*, *supra*, at 161. MCL 46.30a of the CBCA applies, however, only to boards of county commissioners. Since at issue here is a board of county commissioners, the more specific statute applies. Therefore, MCL 46.30a applies both to the Board in general and defendant Williams in particular. Hence defendant Williams was ineligible for appointment to Zoning Administrator because of his status as a member of the Board. In the absence of any other statutory authority authorizing the Board's appointment of defendant Williams to Zoning Administrator, defendants plainly violated MCL 46.30a and we affirm the lower courts' violation determinations.

II. Government Tort Liability Act

Defendants argue they are absolutely immune to personal liability for actions taken in their official capacity pursuant to the Government Tort Liability Act (GTLA) MCL 691.1401 *et seq*, because they are the highest elected officials in the county. MCL 691.1407(5). Among other arguments, plaintiff counters that because defendants' liability is created by separate statute, MCL 46.30a, GTLA is not implicated and defendants are not entitled to immunity protections.

MCL 46.30a(2) creates civil liability for commissioners of boards of county commissioners who violate the section and provides as follows:

> In case of an appointment or employment made in violation of this section, both the person making the appointment or employment and the person appointed or employed shall be liable for money paid to the person as salary, wages, or compensation in connection with the appointment or employment.

In the instant case, the county prosecuting attorney brought the action for recoupment of salary pursuant to MCL 46.30a(2) in the name of a requesting taxpayer. MCL 46.30a(3). Plaintiff did not bring a recoupment action as an exception to GTLA.[5]

Our Supreme Court, while acknowledging the application of governmental immunity, has stated, "there are other areas outside the GTLA where the Legislature has allowed specific actions against the government to stand, such as the Civil Rights Act." *Mack v Detroit*, 467 Mich 186, 195; 649 NW2d 47 (2002). Plainly, the Legislature has created specific liability for commissioners of boards of county commissioners. MCL 46.30a(2) and (4). Plaintiff's action, properly brought pursuant to the CBCA, is outside the reach of the GTLA and defendants are not entitled to immunity protections.

Because of our resolution of the issue, we decline to reach plaintiff's alternative arguments that defendants as county commissioners do not come within the ambit of MCL 691.1407(5) as the highest elective county officials and that defendants' acts were ultra vires thus denying them GTLA immunity protections.

III. Entrapment by Estoppel

Defendants argue that they enjoy good faith immunity because of their reliance on the prosecutor's and the Attorney General's letters. Without specifically labeling the theory of defense "entrapment by estoppel" defendants presented and argued the elements of the doctrine under a theory of good faith. Plaintiff argues that good faith is absent because the prosecutor warned defendants not to appoint defendant Williams, defendants did not request an opinion from anyone regarding how to cure the defect, and defendants agreed that defendant Williams could not hold both positions. Both lower courts denied defendants' good faith immunity argument for the reason that defendant Williams' interview preceded defendants' request for legal advice.

While arguing good faith immunity in their pleadings and briefs of law, defendants at oral argument relied on the analysis in *People v Woods*, 241 Mich App 545; 616 NW2d 211 (2000). In *Woods*, the defendant was charged with violation of election law when he as a candidate for elective office acted as an election assistant and received absentee ballots although he was ineligible to do so because of his own candidacy. The defendant maintained that he should be absolved from blame under the doctrine of entrapment by estoppel because the township official charged with the responsibility of appointing election assistants allowed the defendant to participate in the absentee ballot process. This Court recognized the existence of the entrapment by estoppel defense and remanded for an evidentiary hearing to allow the trial court to determine the applicability of the defense as a matter of law. *Id.*, at 548, 554-556, 560-561.

[5] Absent an exception, a governmental agency is immune from tort liability if the agency was engaged in a governmental function. MCL 691.1407(1).

Our Court, drawing from *United States v West Indies Transport, Inc*, 127 F3d 299, 313 (CA 3, 1997) and *United States v Levin*, 973 F2d 463 (CA 6, 1992) established the following elements for applicability of the doctrine of entrapment by estoppel: (1) a government official, (2) told the defendant that certain criminal conduct was legal, (3) the defendant actually relied on the government official's statements, (4) and the defendant's reliance was in good faith and reasonable in light of the identity of the government official, the point of law represented, and the substance of the official's statement, and (5) that given the defendant's reliance, the prosecution would be unfair. *Woods, supra,* at 558-559.

An analysis of entrapment by estoppel necessarily requires scrutiny of the facts in the context of the underlying action, a prosecutorial action for recoupment of salaries paid pursuant to MCL 46.30(2) in a civil context. Liability for recoupment is predicated on the employment of, and the receipt of salary by an ineligible commissioner. We have already determined that defendant Williams was ineligible for appointment to Zoning Administrator. And, the facts illustrate that after resignation as a commissioner, the county he served employed him and paid him a salary. While the potential for both civil and criminal liability[6] certainly attached, several facts require us to analyze the defense of entrapment by estoppel. At the time of defendant Williams' interview on April 16, 2002, the commissioners were unaware of any wrong-doing, and it was not until April 24, 2002, that the Board was alerted to potential impropriety. At that juncture, defendant Williams' appointment was not yet complete. Although defendant Williams contemplated resignation, the Board and defendant Williams had not yet fixed termination of office and start dates. Also, the Board and defendant Williams had not yet established terms and conditions of employment. The prosecutor's letter dated April 24, 2002, was equivocal.

The prosecutor advised in his letter that he, "located some information that [he] felt the Board should be aware of with respect to Commissioner Williams being appointed as Building and Zoning Director." He related the pertinent sections of MCL 46.30a, noted defendant Williams' absence from participation in the selection of the Zoning Administrator, acknowledged defendant Williams' intent to resign from the commissioner's office, and stated that defendant Williams' resignation "would resolve any problems with the Incompatible Office Act." The prosecutor warned that because of MCL 46.30a, defendant Williams' consideration for the post "may be a violation of law." The prosecutor's research into the applicable law centered around Attorney General opinions. The prosecutor stated that "with respect to this statute the opinions of different Attorney Generals seem to be in direct conflict with each other." He added, "there are more current opinions by the Attorney General which could be interpreted to say that a commissioner could hold two offices if the Board granted its approval. This was based on an amendment to the Incompatible Public Offices Act that permits a public officer or public employee to hold two offices in a county with a population of less than 25,000."[7]

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[6] The prosecutor is empowered to bring a civil action in the name of a taxpayer. MCL 46.30a(3). The prosecutor may also bring a criminal action pursuant to MCL 46.30a(4).

[7] The prosecutor attached two opinions in support of that determination to his letter to the Board.

The prosecutor further advised that he was uncertain regarding the application of the IPOA. He specifically stated that he did not claim "that a Commissioner who is being appointed to a Department Head position by the Board is legal or illegal" and concluded that he was "unable to make that determination at this time." Regarding potential liability he stated, "based on my review of the law, if a request was made by a taxpayer, I would probably have to file a declaratory action and have a judge interpret the statute. Based on the above I would advise that the Board seek an Opinion from the Attorney General to determine weather [sic] or not it is legal for a Commissioners [sic] to seek a position that would be appointed directly by the Board. Furthermore, if it is legal for the Board to vote to hire a Commissioner as a County Department [sic] while [the] individual [is] still sitting as a Commissioner." Finally, the prosecutor closes stating, "again, I am not claiming that this Board or commissioner Williams broke the law. However, I feel that *before* the Board or Commissioner Williams take any action they should be aware of the information that I have located." [Emphasis added.]

Our review of the prosecutor's letter dated April 24, 2002, reveals that the Board's actions and defendant Williams' actions were incomplete at that time. The prosecutor advised the Board to seek the advise of the Attorney General before proceeding. The Board followed the prosecutor's suggested course and obtained an opinion from the Attorney General's office in the matter. It was not until the deputy Attorney General advised that, "it appears under these facts that the county commissioner may serve in both roles," that defendants forged on and completed defendant Williams' appointment.

The record demonstrates that defendants received opinions regarding the legality of their actions from two separate governmental officials. The prosecutor provided an equivocal letter on the subject of an MCL 46.30a violation, he did not conclude illegality on the part of defendant Williams or the Board, he advised that he would seek a declaratory action if requested by a taxpayer to prosecute, and he recommended that the Board obtain an opinion from the Attorney General on the subject before proceeding further, thereby, acknowledging the incompleteness of the earlier Board proceedings. In line with the prosecutor's recommendation, the Board sought the advice of the Attorney General's office who advised that defendant Williams' appointment would be legal.

The prosecutor's and the deputy Attorney General's representations to defendants satisfy the first two elements of the doctrine of entrapment by estoppel because these individuals were government officials who told defendants their conduct was legal. *Woods, supra*, at 558-559. Defendants also clearly demonstrated the third element of the doctrine of entrapment by estoppel because it is undisputed that the Board heeded the prosecutor's advice to seek out advice from the Attorney General on the legality of defendant Williams' appointment. The Board indeed obtained the Attorney General's opinion and relied on it in moving forward with its subsequent appointment of defendant Williams. Further, it was implicit in the prosecutor's failure to seek a declaratory judgment as he had previously advised, that the deputy Attorney General's opinion was both reliable and subject to reliance. *Id.*

We move now to the fourth element of entrapment by estoppel, whether defendants' reliance was in good faith and reasonable. *Woods, supra*, at 558-559. It is absurd to imagine a scenario where a county board of commissioners cannot reasonably rely on its prosecutor, the office charged with the responsibility of law enforcement, or the office of the Attorney General, the department of state government championing law enforcement in Michigan, to provide

learned and reliable opinions on the legality of county board functions. We find it obvious that the Board was more than justified when it relied on the legal conclusions presented to it by the prosecutor and the office of the Attorney General. *Id*.

The final element of the doctrine of entrapment by estoppel, unfairness and prejudice respectively, was established by the prosecutor's institution of legal proceedings for recoupment of the salaries paid as a result of defendant Williams' appointment by the Board. Defendant Williams performed the duties of Zoning Administrator and if the lower courts' opinion were to stand, he would now be required to repay the sums received for his work. Similarly, defendants would be obligated to personally repay the sums paid to defendant Williams to the county. Despite the statutory violation, ultimately the county did receive the benefit of performance of a Zoning Administrator, and if allowed, without the burden of a budget impact. Given defendants' good faith reliance, we find this result patently unfair. *Woods, supra*, at 558-559.

The trial court's finding that the Board interviewed defendant Williams for the appointment before the Board requested legal advice is not determinative of the good faith or justification elements in the application of estoppel, referred to as good faith immunity by the trial court. At the time of the interview, the prosecutorial action for recoupment of salaries paid had not come to fruition. Further, the appointment process was incomplete, defendant Williams had not taken office, the Board had not incurred a salary obligation, and in fact no salaries had been paid. The prosecutor's letter to the Board was after the Board's interview of defendant Williams and the prosecutor advised a legal inquiry before proceeding further in the appointment process. The prosecutor, in his position against the application of good faith immunity, that the Board did not request an opinion on how to cure the impropriety further intimates that a cure was available before liability would attach. We conclude that the trial court's finding regarding the timing of defendant Williams' interview insufficient to defeat the defense of entrapment by estoppel.

Conclusion

The CBCA, MCL 46.30a prohibits the eligibility of a serving county commissioner for appointment or employment as a county department head except as specifically provided in the act. Zoning Administrator is not one of the exceptions. The MCL 15.183(4)(c) exception to the IPOA, MCL 15.182, for counties having a population of less than 25,000 persons does not vitiate the responsibilities and liabilities provided in the CBCA. The GTLA, MCL 691.1407(5) and the immunity therein provided is not available to county commissioners who violate MCL 46.30a. The liability for recoupment of salaries paid is a separate cause of action created by the Legislature in the CBCA and is not within the scope of the GTLA. Finally, because defendants actually, in good faith, and to their detriment, relied on the prosecutor's and the deputy Attorney General's representations that defendants' conduct was legal, the prosecution of the action is unfair. As such, the doctrine of entrapment by estoppel applies in this prosecutorial action and relieves defendants from liability imposed by application of the CBCA, MCL 46.30a (2), (3), and (4).

Affirmed in part, reversed in part, and the judgment of the district court as affirmed by the circuit court is vacated. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Peter D. O'Connell
/s/ Pat M. Donofrio